IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 987 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SUTHARIA DIPAKKUMAR MOHANLAL

Appearance:

1. Criminal Appeal No. 987 of 1992

Ms.Hansa Punani, learned A.P.P.for Appellant No.

MR UI VYAS for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 13/08/2004

ORAL JUDGEMENT

#. This appeal is preferred by the State under Section

378 of the Criminal Procedure Code, 1973 against the judgment and order of the learned Judicial Magistrate, First Class, Umreth passed in Criminal Case No.1222 of 1989 wherein the appellant was acquitted for the offence punishable under Section 325 and 504 of the Indian Penal Code and convicted him for the offence punishable under Section 323 of the Indian Penal Code and sentenced him for simple imprisonment of six months and fine of Rs.500/- in default simple imprisonment for thirty days.

#. The facts are such that the appellant gave a blow of iron rod on the left hand and neck part of Hinaben and also gave blow of the said rod to the complainant, witness Amisha and Paresha and thus complaint under Section 325,323 and 504 of the Indian Penal Code was registered against the appellant. Chargesheet was framed against the appellant and on his pleading not guilty to the charge, the case was tried. After recording the evidence of the witnesses and going through the documentary evidence, the learned trial Court convicted the appellant for the offence punishable under Section 323 of the I.P.C. as stated above and acquitted him for the offence punishable under Sections 325 and 504 of the I.P.C. It is against the acquittal of the appellant, this appeal is preferred by the State.

#. Ms.Punani, learned A.P.P. for the State took me through the deposition of various witnesses including the deposition of injured Hinaben Pramodbhai Shah at exh.12, Pareshben Pramodbhai Shah exh.14, Amishaben Pramodchandra Shah exh.15, Dr.Rajesh Ratilal Patel exh. 16 etc. and also taken me through the other documentary evidence. Ms.Punani submitted that injured witness Hinaben has suffered fracture of ulna and therefore the trial court ought to have convicted the appellant. She has emphasized that the weapon used is iron bar and if it is struck on any person, it will cause grievous injury and not simple injury. Relying on the doctor's certificate, the trial court came to the conclusion that the injury caused is simple and not grievous injury but the conclusion is not correct as the weapon used is iron bar and three witnesses have been injured. Therefore, she prays that the appeal should be allowed and the appellant should be convicted and sentenced under Section 325 and 504 of the I.P.C. and should be sent to jail.

#. Mr.Vyas, learned advocate for the respondent-accused submitted that Hinaben received contused wound which can be termed as simple injury. Mr.Vyas has read before me paras 30 to 36 of the judgment and submitted that though

there is mention of fracture of ulna, there is no report of radiologist for the same in the name of the injured witness. Mr.Vyas has submitted that though the respondent had an iron bar in his hand, the injury shown to be caused to the injured was of a simple injury and therefore the trial court has rightly come to the conclusion that there is a simple injury and rightly passed the sentence as stated above and therefore this Court may not interfere with the same and this appeal may be dismissed.

#. I have perused the material on record and the judgment of the learned trial Court and the deposition of injured witness along with doctor's report. It is true that the respondent-original accused was having an iron bar in his hand, however, the injury caused to the witness Hinaben was of a simple nature and cannot be stated as grievous hurt as defined in Section 325 of the Indian Penal Code, in view of the fact that there is no report of radiologist on the record. I do not find any date, position on the x-ray report giving opinion regarding the fracture of ulna of Hinaben.

#. In view of the aforesaid circumstances, I am of the opinion that the learned trial Court has rightly come to the conclusion regarding the offence committed by the respondent-accused and therefore the judgment and order of the learned trial court is not required to be interfered and this appeal is required to be dismissed.

#. Accordingly, this appeal stands dismissed. The judgment and order of the learned trial Court is hereby confirmed.

(SHARAD D DAVE, J)

srilatha